IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.9209 OF 1997.

Murugampakkam Primary
Agricultural Cooperative Bank,
rep. by its President
Maduranthakam,
Chengai Anna District. ... Petitioner

-Vs-

1. The Deputy Commissioner
of Labour (Appeal),
Chennai,
DMS Complex,
Chennai-600 006.

2. S.Ramachandran
3. Joint Registrar of Cooperative
Societies,
Chengai MGR District,
Kancheepuram. ... Respondents
Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : No Appearance
^For R.1 & R3 : Mrs.Malarvizhi,
Govt.Advocate
For R.3 : No Appearance

:O R D E R

The above writ petition has been filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records relating to the order dated 7.1.1997 made by the first respondent in T.S.E.No.23 of 1995 and quash the same.

2. On 21.9.2004, when the above matter has been taken up for consideration, no representation has been offered on the part of the petitioner and the contesting second respondent and hence this Court is left with no option but to hear those who are present and reserve the judgment for proper consideration of the materials placed on record and to decide the same.

3. On a perusal of the materials placed on record and upon hearing the learned Government Advocate for the respondents 1 and 3, it comes to be known that the second respondent was the Secretary of the petitioner Cooperative Bank and on charges that he committed irregularities and that he had not maintained the ledger books properly and had misappropriated funds of the Bank to the tune of Rs.1,66,258.95, and hence conducting a departmental enquiry, a punishment of dismissal from service was inflicted on him. Thereupon, the second respondent preferred an appeal before the first respondent who, having observed that the domestic enquiry was conducted in total violation of the principles of natural justice, held that the termination of the second respondent was illegal and unjust and has set aside the order of dismissal. Aggrieved, the Management has come forward to file the above writ petition.

4. In the affidavit filed in support of the above writ petition, the petitioner/Management has submitted that the second respondent has misappropriated several amounts of the petitioner Bank and committed several irregularities and he was placed under suspension on 9.3.1993 pending enquiry; that on such charges, a domestic enquiry was commenced on 30.7.1994 and the second respondent requested the assistance of an Advocate by filing a memo. but the Enquiry Officer, upon examination of the second respondent, found that he was a Graduate with sufficient knowledge of putting up his case since he was possessed of the knowledge of Cooperative Societies Act and turned down the request of the second respondent and persuaded the second respondent to continue to defend himself in the enquiry; that the enquiry officer accusing that the second respondent unnecessarily disrupted the enquiry proceedings by raising irrelevant demands coupled with uncharitable remarks and left the venue of enquiry on his own accord thereby absenting himself from putting forth his defence and on such remarks, set him exparte and having gone through the materials available on records connected with the proceeding submitted his report on 18.11.1994 on the basis of which, a show-cause notice dated 13.12.1994 was issued to the second respondent along with the Enquiry Officer's findings by registered post and the second respondent, having received the same, since failed to give explanation within the stipulated time, the petitioner management dismissed him from service and sent the order by registered post to the second respondent which also he refused to receive.

5. In the above scenario, the petitioner would further submit that the second respondent in his letter dated 8.3.1993 has admitted the act of misappropriation and promised to repay the said amount but he has not paid any amount and even during the enquiry, the principles of natural justice have not at all been violated as the petitioner has permitted the second respondent to verify the documents as per his request further effecting the payment of the entire subsistance allowance; that the Enquiry Officer has not permitted the assistance of an Advocate to the second respondent as the charges levelled against him were simple and unambiguous and that an Advocate was appointed as an Enquiry Officer only to conduct an impartial enquiry as per law. But, on appeal preferred by the workman, the learned appellate authority, the first respondent herein, without considering the submissions of the petitioner, has

allowed the appeal of the second respondent/ workman and hence the present writ petition.

6. The case of the second respondent/workman before the appellate authority was that he joined the services of the Management on 2.4.1987 ; that he was the main witness in the assault case between the Circle Supervisor the petitioner Primary Cooperative Bank and the Field Manager of the Kancheepuram Control Cooperative Bank, Maduranthakam Branch, which was disliked by the Circle Supervisor and hence he was victimised by the said Circle Supervisor consequent to which all these false charges were framed against him and even his request for the assistance of an Advocate in the enquiry was rejected by the Enquiry Officer, who has only directed him to say 'yes' or 'no' against the charges levelled; that he was forced to sign the written statements prepared by the Enquiry Officer and an exparte enquiry was conducted without affording any opportunity to him thus violating the principles of natural justice and hence he was not even able to give his explanation as a culmination of which and he was dismissed from service with retrospective effect from 9.3.1993 under a dismissal order dated 6.4.199 5 which was pasted at his residence on 15.6.1995; that his long unblemished service was not taken into account before awarding the capital punishment. On such grounds, he would pray to the appellate authority to set aside the order of the disciplinary authority.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned Government Advocate for respondents 1 and 3, this Court is able to assess that a departmental enquiry was initiated against the second respondent herein who was the Secretary of the petitioner Cooperative Bank to go into the charges of misappropriation of funds of the Bank and the same has been decided exparte since, according to the Management, the second respondent did not cooperate with the Enquiry Officer in the conduct of the enquiry. But, the same would be attributed by the second respondent to the high-handed behavioural pattern of the Enquiry Officer at the instigation of the Circle Supervisor of the petitioner Cooperative Bank, who was ill-disposed of with him. The second respondent would offer the reason for such a stand to be taken that since he did not budge to the dictates of the Circle Supervisor since he was cited as the main witness in the case registered as a result of the assault that took place in between the Circle Supervisor of the petitioner and the Field Manager of the Kancheepuram Control Cooperative Bank, Maduranthakam Branch, all these false charges are framed against him. Therefore, the second respondent has, prima facie, a strong case to put up against the Circle Supervisor of the petitioner Bank, who is his superior, to have manipulated the facts and accused the petitioner of having indulged in misappropriation of the funds of the petitioner Bank which, according to him, is not true and he has been victimised in commencing the disciplinary proceeding against him on false charges framed.

8. Be that as it may. Now the point for consideration is 'whether a free and fair enquiry has been held by the Enquiry Officer appointed by the petitioner to go into the charges framed against the second respondent so as to arrive at the conclusion to hold the charges proved as it has been arrived

at on the part of the Enquiry Officer based on which the petitioner awarded the punishment of dismissal from service against the second respondent/delinquent Officer or whether for non-cooperation on the part of the second respondent for conducting a smooth enquiry, the Enquiry Officer was left with no option but to decide the enquiry exparte and whether such opportunity afforded to the second respondent in the case in hand is sufficient opportunity in the circumstances of the case'? This point has been answered in the negative and in favour of the second respondent on a wide discussion held on facts connected in the appeal preferr ed by the delinquent Officer before the first respondent who allowed the appeal setting aside the order of dismissal passed by the disciplinary authority based on the findings of the exparte enquiry.

9. A perusal of the materials placed on record would show that the second respondent delinquent was not even permitted to verify the documents and registers connected with the charges and that he was not even paid the subsistance allowance during the period of suspension and therefore he was not in a position to send his explanation to the show-cause notice; that moreover, according to the second respondent, his request for the assistance of an Advocate has also been rejected by the Enquiry Officer and this could be termed by the second respondent as a lack of opportunity as against the principles of natural justice.

10. Regarding the permission sought for by the second respondent seeking assistance of an Advocate, it has been rejected by an order which does not seems to have been challenged before the appropriate appellate authority and therefore that issue has been finalised and no discussion need be held on that subject. But, the other two main charges alleged against the enquiry officer and the disciplinary authority that the Enquiry Officer did not at all permit him to peruse the vital documents and registers connected to the charges and that he was not at all paid the subsistance allowance during the period of suspension, which are not only against the cardinal principles governed by the laws and the propositions of the upper forums of law particularly that of the Honourable Apex Court but also a vindictive one and further since the Enquiry Officer did not follow the procedures which are to be normally adopted in the matter of such enquiry proceedings, the second respondent was not able to carry on with the enquiry proceedings and the same could not be termed as refusal to participate in the enquiry proceeding. Therefore, the appellate authority has every reason to arrive at, in his considered view, his own conclusions that the domestic enquiry has been conducted in total violation of the principles of natural justice and hence held the dismissal of the delinquent officer from the services of the petitioner's Bank as unjust, illegal and invalid, consequently allowing the appeal and it is this order passed by the appellate authority and the Deputy Commissioner of Labour (Appeals) Chennai, which is under challenge in the above writ petition.

11. No doubt, the Enquiry Officer, alleging non-cooperation on the part of the delinquent Officer, has decided the enquiry exparte holding the second respondent guilty of the delinquencies for which he was charged against and the same would be attributed by the second respondent to the wrong

procedures adopted on the part of the Enquiry Officer without affording him such opportunities required to be given under law.

12. On a careful perusal of the enquiry report, the order of the disciplinary authority and the order of the appellate authority as well, this Court is able to see that there is no evidence for the Enquiry Officer to have permitted the petitioner either to peruse the records and documents connected to charges and that the second respondent has not even been paid the subsistance allowance as required under law. The opportunity to peruse the records is one of the basic requirements of law that is afforded for the delinquent and even without perusal of the records, the delinquent Officer would not at all be able to meet with the charges so as to put up a valid defence and hence as held in many landmark judgments by the High Courts and the Honourable Apex Court, denial of such opportunities for perusal of records and documents would vitiate the entire enquiry proceeding thus ultimately the enquiry proceeding or the findings thereon becoming liable to be set aside since it is against the principles of natural justice.

13. Likewise, payment of subsistance allowance is the legal right granted under law for a delinquent officer who is facing enquiry in any enquiry proceeding since it is the only means of livelihood for the delinquent officer to survive during the pendency of the enquiry and therefore it is not out of place to mention that non-payment of the subsistance allowance besides being inhuman and incongruous goes against the principles of the Subsistence Allowance Payment Act and this would also attribute motives to the disciplinary authority regarding the very disciplinary proceeding initiated against him and since on the part of the petitioner Bank they are not able to place such materials before this Court to the effect that sufficient and reasonable opportunities were afforded for the second respondent to exhaust his remedies particularly in the matter of putting up a valid defence such as seeking the assistance of an expert, perusal of the documents etc. and since such opportunities have not been afforded to the second respondent, needless to mention that it is a case of denial of such opportunities in violation of the principles of natural justice and in denying to pay the subsistance allowance, the basic rights of the petitioner enshrined under law have been denied and at this score also, the enquiry proceeding initiated by the disciplinary authority, the petitioner Bank herein, becomes tainted and therefore the conclusions arrived at by the appellate authority in setting aside the decision of the disciplinary authority resorting to dismissal of the second respondent from service has been legally and in the circumstances of the case, rightly done and therefore this Court does not find it necessary to cause its interference into such a well considered and merited order passed by the appellate authority and hence the following order:

In result,
(i) the above writ petition does not merit acceptance but becomes liable only to be dismissed and is dismissed accordingly.

(ii) The order dated 7.1.1997 made in T.S.E.No.23 of 1995 by the first respondent/The Deputy Commissioner of Labour (Appeals) Chennai is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes
Rao

To

1. The Deputy Commissioner
of Labour (Appeal),
Chennai,
DMS Complex,
Chennai-600 006.

2. The Joint Registrar of Cooperative Societies,
Chengai MGR District,
Kancheepuram.